

AMENDED IN SENATE JUNE 29, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2317**

**Introduced by Assembly Member Oropeza**

February 19, 2004

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An act to amend Section 1197.5 of the Labor Code, relating to gender pay equity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2317, as amended, Oropeza. Gender pay equity.

Existing law prohibits employers from paying an employee at a wage rate less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment differential is made pursuant to a bona fide factor other than sex. Existing law further imposes penalties on employers who violate this provision, subjecting them to civil action and specifying liquidated damages that may be paid to employees who are paid unfairly in violation of existing law.

This bill would ~~increase the amount of liquidated damages due to employees who are paid unfairly in violation of~~ *increase the damages an aggrieved employee may obtain if successful in bringing a civil action against an employer who has violated existing law to include a specified civil penalty*, and would mandate the types of damages ~~those~~ employees should recover if successful in bringing a civil action against their employer *for willful violations of existing law*.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1197.5 of the Labor Code is amended to read:

1197.5. (a) No employer shall pay any individual in the employer's employ at wage rates less than the rates paid to employees of the opposite sex in the same establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where the payment is made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any bona fide factor other than sex.

(b) Any employer who violates subdivision (a) is liable to the employee affected in the amount of the wages, and interest thereon, of which the employee is deprived by reason of the violation, and in an additional equal amount as liquidated damages.

(c) The provisions of this section shall be administered and enforced by the Division of Labor Standards Enforcement. If the division finds that an employer has violated this section, it may supervise the payment of wages and interest found to be due and unpaid to employees under subdivision (a). Acceptance of payment in full made by an employer and approved by the division shall constitute a waiver on the part of the employee of the employee's cause of action under subdivision (g).

(d) Every employer shall maintain records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by the employer. All of the records shall be kept on file for a period of two years.

(e) Any employee may file a complaint with the division that the wages paid are less than the wages to which the employee is entitled under subdivision (a). These complaints shall be investigated as provided in subdivision (b) of Section 98.7. The name of any employee who submits to the division a complaint regarding an alleged violation of subdivision (a) shall be kept confidential by the division until validity of the complaint is established by the division, or unless the confidentiality must be abridged by the division in order to investigate the complaint. The name of the complaining employee shall remain confidential if the

complaint is withdrawn before the confidentiality is abridged by the division. The division shall take all proceedings necessary to enforce the payment of any sums found to be due and unpaid to these employees.

(f) The department or division may commence and prosecute, unless otherwise requested by the employee or affected group of employees, a civil action on behalf of the employee and on behalf of a similarly affected group of employees to recover unpaid wages and liquidated damages under subdivision (a), and in addition shall be entitled to recover costs of suit. The consent of any employee to the bringing of any action shall constitute a waiver on the part of the employee of the employee's cause of action under subdivision (g) unless the action is dismissed without prejudice by the department or the division, except that the employee may intervene in the suit or may initiate independent action if the suit has not been determined within 180 days from the date of the filing of the complaint.

(g) Any employee receiving less than the wage to which the employee is entitled under this section shall recover in a civil action the balance of the wages, including interest thereon, ~~and an amount equal to treble the balance of the wages as liquidated damages~~ *an equal amount as liquidated damages, and an amount equal to double the balance of the wages as a civil penalty*, together with the costs of the suit and reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage. If it is determined that the employer willfully violated this section, the employee shall recover ~~as liquidated damages an amount equal to five times the balance of the wages due~~ *the balance of the wages, including interest thereon, an equal amount as liquidated damages, and an amount equal to four times the balance of the wages as a civil penalty*.

(h) A civil action to recover wages under subdivision (a) may be commenced no later than two years after the cause of action occurs, except that a cause of action arising out of a willful violation may be commenced no later than three years after the cause of action occurs.

(i) If an employee recovers amounts due the employee under subdivision (b), and also files a complaint or brings an action under subdivision (d) of Section 206 of Title 29 of the United States Code which results in an additional recovery under federal law for the

1 same violation, the employee shall return to the employer the  
2 amounts recovered under subdivision (b), or the amounts  
3 recovered under federal law, whichever is less.

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